87-114

NO.

Supreme Court, U.S.
FILED
JUL 15 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October term 1987

LEO D. MAGYAR, PETITIONER

AND

MAGDALENA MAGYAR, PETITIONER

V.

UNITED FIRE INSURANCE COMPANY,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LEO D. MAGYAR AND
MAGDALENA MAGYAR
400 North Martel Avenue
Los Angeles,
California 90036
(213) 653-3069

QUESTIONS PRESENTED

1./ Whether the court of appeals correctly ruled on the issues presented for review:

A. Did the district court abuse its discretion and violate appellants' due process rights by striking testimony and dismissing the action?

B. Did the district court erroneously deny appellants their right to a jury trial?

C. Did the appellee adequately establish federal jurisdiction upon removal of the action?

2./ Whether the court of appeals sanctioned a departure by the district court from the accepted and usual course of judicial procedures by granting the respondent the preliminary injunction of probing the issue of fraud?

3./ Whether the court of appeals overlooked that the full rights of the petitioner were abridged by the district

court's order of granting their counsel of record leave to withdraw from the case?

4./ Whether the court of appeals overlooked that the petitioner Magdalena Magyar was punished by the district court without cause?

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October term 1987

LEO D. MAGYAR, PETITIONER and

MAGDALENA MAGYAR, PETITIONER

V.

UNITED FIRE INSURANCE COMPANY, et al.,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Leo D. Magyar, petitioner and Magdalena Magyar, petitioner respectfully pray for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit

I

TABLE OF CONTENTS

Opinion Below	2
Jurisdiction	2
Statement of the Case	3
United States Constitution Due Process Violation	10
Preliminary Injunction	10
Conflict in Decision to Affirm	11
Plenary Decision is Required	14
Reasons For Granting the Writ	15

II

TABLE OF AUTHORITIES

Pollar v. Columbia Broadcasting Co. 12, 15

III

STATUTES

Fifth Amendment U.S. Constitution 10

Fourteenth Amendment U.S. Constitution 10

28 U.S.C. 1254 3

28 U.S.C. 1441 4

F.R.C.P. 56(c) 11, 13

California Ins. Code 790.03(h) 4

OPINION BELOW

The Order and Amended Opinion of the United States Court of Appeals for the Ninth Circuit is reproduced in Exhibit "A". The judgment of the United States District Court Central District of California printed in Exhibit "B".

JURISDICTION

Notice of appeal has been filed by the petitioners to the United States Court of Appeals from the judgment of the United States District Court entered on January 9, 1986 (appended). On March 4, 1987 the Court of Appeals affirmed the judgment of the District Court dismissing the petitioners' case. Petitioners have timely filed a petition for rehearing on March 16, 1986. On April 17, 1987 the court of appeals with its Order and Amended Opinion affirmed the judgment of the district court

dismissing the petitioners' case. The jurisdiction in this court is invoked under Title 28, United States Code 1254.

STATEMENT OF THE CASE

Claims were made by petitioner Leo Magyar under the health insurance policies issued to him by the respondents. Similarly, petitioner Magdalena Magyar claimed benefits under the policies issued to her. Each of the two petitioners were the applicant, the owner and the beneficiary of their policies, and made claims on their self losses. Because the insurer's policies issued to each of the petitioners, and the policies assumed from other insurance company, as well as the claim handling procedures were identical, the petitioners file lawsuit together, in order to save time for the court. Petitioners sought benefit payments and compensatory

and punitive damages from respondent insurance company, for breach of contract, bad faith and for violation of section 790.03(h) of the California Insurance Code. The case was removed from state court to federal district court on the ground of diversity of citizenship, pursuant to 28 U.S.C. § 1441. Jury trial was first assigned to the case by the district court. The second judge changes the original order to bench trial. The trial was aborted due to witness' perceived lack of cooperation. Petitioners filed appeal. The United States Court of Appeals for the Ninth Circuit affirmed the judgment of the district court.

DIVERSITY OF CITIZENSHIP was the ground for the respondents' request for removing the case from the state court to the federal court. The statement that the respondents are citizens of the state of New York was

not supported by any evidence. The incorporation of a firm, or the birth of an individual in a state does not assign a permanent citizenship of that state. Respondents stated that their principal place of business is in the state of Illinois. This is in contradiction to their statement that they are citizens of the state of New York. They did not state what kind of business they are doing in Illinois, and they did not offer any proof of it. The only undisputed fact was, that they were duly licensed to do insurance business in the state of California. The business of insurance is a state regulated industry and the Insurance Code of California is a constitutional act. By applying to be admitted to do business in California, and by submitting plans of insurance for approval, respondents subordinated themselves to the jurisdiction of the authori-

ties of California. They are not ignorant of the insurance laws. They know more about insurance laws than millions of Californians do, and, therefore, for the purpose of this lawsuit, they are to be considered citizens of the State of California. The diversity of citizenship is ill applied.

JURY TRIAL was ordered by the first judge assigned to the case in the district court. Intended to be that, or not, this was in recognition of the petitioners' right to Jury Trial, and of the privileges of the people of California to see how their laws are working. Laws, which are affecting, day by day, millions of Californians. The second judge, with a stroke of a pen changed the order to Bench Trial. It would be a waste of the court's time to repeat here the position by the counsel of the petitioners. The change

came without explanation, and so came the withdrawal of the privileges already afforded to the people.

THE STRIKING THE TESTIMONIES came without warning. The text cited in the Opinion has been incorrectly evaluated by the Court of Appeals. The district court did not intend to warn the witness. The text cited in Opinion Infra, page 6, first entry) (Exhibit "A", App 6) clearly shows that the district court addressed its words to the counsel of the respondents, speaking about the petitioner-witness and not to him:

> "I think this plaintiff is not responding to counsel's questions and I am about to bar further testimony by him and strike his direct altogether unless he answers counsel's questions.
>
> You put this question one more time and if he declines to reply, I am going to strike all of his testimony."

The court recognized that "...it is difficult for [the witness] to hear what's

being asked" (RT 58).

The court also concluded that the petitioner-witness's hearing impairment "more than anything" was the reason... (RT 84).

If there had been any intention to warn the court had certainly want to be sure that warning has been heard or not.

THE PUNISHING OF THE SECOND PETITIONER was clearly not in place. It was the manifestation of an emotional reaction that the court proclaimed, "...I do not feel that it is proper for **these** plaintiffs, and Mr. Magyar **in particular**, to put...this display of disrespect...." Petitioner Magdalena Magyar has not been asked any question and she has not said a single word during the entire process of the trial. There is nothing in the RT about her either. There was no warning before punishing her and the testimonies of the

witness pertaining to her case were to the court's satisfaction.

THE WITHDRAWAL OF THE ATTORNEY OF RECORD OF THE PLAINTIFFS was granted by the district court in the course of the proceedings to protect the interest of the attorney-judge-pro-tem for the event of a malpractice suit predicted by the court. The petitioners were deprived of their privilege to hire an attorney in the middle of the proceedings, an attorney who could properly submit motions, oppositions, and requests. The petitioner, due to his hearing impairment was not able to follow the action. The court reporter's transcript came out only in October 1985. The counsel withdrawn in spite of the order of the court and in spite of the repeated request of the petitioners, was not willing to release files so that even the appeal had to be submitted without having the

files.

UNITED STATES CONSTITUTION

DUE PROCESS VIOLATION

The Fifth and Fourteenth Amendment of the United States Constitution clearly states in pertinent part that:

> ...nor shall any state deprive any person of life, liberty, or property, without due process of law...

Due process in this instance would simply mean adherence to statutory procedures that allows for a just and equitable determination of the issues.

PRELIMINARY INJUNCTION

The district court abused its discretion by conceding that the respondents' counsel direct examine the petitioner-witness on matters that are, in essence, an affirmative claim of fraud, an issue, that was declined by court order

from being litigated. The declination by the court was an ascertainment that no preparation on the issue will be necessary on the part of the petitioners' counsel. Furthermore, because the examination took place before the plaintiff-petitioners' case would have permitted to be presented, the district court was not in position to convincingly rule whether the questions and issues were relevant or irrelevant to the subject of the triable cases.

CONFLICT IN DECISION TO AFFIRM

The appeals court overlooked that the case was dismissed by means of summary judgment as to the issue of the plaintiffs' case, which has not been heard by the district court. F.R.C.P. 56(c). The court recognized this when answering to the respondents' counsel, "The plaintiff has not rested its case and the court cannot

assume what the balance of the plaintiff's case might show (RT 146). Nor had the appeals court observed that other triable issues, as set forth in the pre-trial order (Appendix _____) have not been tried. Issues such as whether respondent insurer breached its duty of good faith and fair dealing in processing petitioners' claims, or, whether respondent was obligated to make payments to petitioners under their policies? The last paragraph of the pre-trial order provides that these issues remained to be litigated and that the P.T.C. Order shall govern the course of the trial. Consequently, it cannot be determined that there is no genuine issue for trial that would necessitate summary judgment. The United States Supreme Court held in Poller v. Columbia Broadcasting System 368 U.S. 464, 473, 82 S.Ct. 486, 491, 7 L. Ed. 458 that,

"Summary Judgment-Triable Issues 2. Federal Civil Rule 56(c) authorizes summary judgment only where the moving party is entitled to summary judgment as a matter of law, where it is quite clear what the truth is, and where no genuine issues remain for trial, the rule does not cut litigant right off to trial by jury if he really has issues to try."

This particular Supreme Court ruling holds that summary judgment can only be proper when litigant has been afforded all the procedural due process rights, leaving no doubt as to any genuine issues that are triable.

In this case, besides the issues ordered to be tried with the P.T.C. Order, there are other compelling reasons for the case of the petitioners to be tried. The respondents' counsels, with frequent repetitions in their motions, as well as at the trial, stated and proved that several other insurance companies have paid under their policies similar to those of the respondents, on

claims on the very same occurrence on which respondents declined payments. In addition, the respondents' counsel acknowledged that some of the years-old claims are still not paid, that respondent declined benefit payments because of lack of itemized bills, and because the notices of claims were not submitted on forms of the company. All these reasons are in violation of the California Insurance Code.

PLENARY CONSIDERATION IS REQUIRED

This lawsuit was filed based on health insurance contracts. While it may be logical to require authenticated proof of medical records on a liability case, the trial by the court on authenticity, in connection with claims on health insurance policy, affects millions of Americans, and is in fact substituting century old (insurance industry) standards for flexible

rules. The court is establishing thereby a jurisdictional precedent which enables any insurance company to send the claimant for authentication back to Czechoslovakia, Bangladesh, or any part of the world before a $4.00, or any amount of medical bills would be paid. ($4.00 is what the policy in case promisses for doctors' visits.)

REASONS FOR GRANTING THE WRIT

Petitioners pray to consider the reasons outlined in the foregoing, emphasizing the following:

The United States Supreme Court has established the precedent in Pollar v. American Broadcasting Company, supra, as the case relates to notice, discovery and triable issues. The Ninth Circuit adherent such principle is clearly set forth in the case cited. The inferior courts action in contradiction to this ruling is in conflict

with the United States Supreme Court.

CERTIFICATE OF SERVICE

On July 14, 1987, I served the attached documents entitled, Petition for writ of Certiorari, on the interested parties in this action, by mailing three copies to the following:

Joseph Rimac
Adams, Duque & Hazeltine
523 West Sixth Street
Los Angeles, California 90014

I, the undersigned, certify and declare that I am over the age of 18 years and not a party to the within action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 14, 1987, at Los Angeles, California.

Barbara Serrano
The Write Type

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ISO MAGYAR and MAGDALENA MAGYAR, *Plaintiffs-Appellants,* v. UNITED FIRE INSURANCE CO., et al., *Defendants-Appellees.*	Nos. 86-5650; 85-6281 D.C. No. CV-83-3552-AHS ORDER AND AMENDED OPINION

Argued and Submitted
January 15, 1987—San Francisco, California

Filed March 4, 1987
Amended April 17, 1987

Before: Dorothy W. Nelson, Alex Kozinski and John T. Noonan, Jr., Circuit Judges.

Opinion by Judge Kozinski

Appeal from the United States District Court for the Central District of California, Alicemarie H. Stotler, District Judge, Presiding

SUMMARY

Witnesses/Courts and Procedure

This action arises from appellant Magyar suit against appellee United Fire Insurance on five health insurance policies. Magyar's testimony was marred from the beginning with nonresponsive and argumentative answers. The district court warned Magyar that if his answers continued to be non-

responsive, she would strike his testimony altogether. Magyar's very next answer was nonresponsive, and the district judge struck his testimony in its entirety. Magyar's lawyer stated that she had no more witnesses to call. The court thereupon dismissed the action.

[1] A trial judge must necessarily have the discretion to order a witness to answer a question; and, if the order is disobeyed, to invoke appropriate sanctions. [2] The judge must give fair warning to the witness before striking his testimony. [3] Although some of Magyar's nonresponsive answers did not concern issues central to his case, the incidents or nonresponsiveness and evasion were so frequent that they came to infect his entire testimony. [4] This court is satisfied that the district judge took into account that Magyar's ability to testify was affected by his age, and by the fact that English was not his native tongue. [5] The record shows that appellants were scheduled to present at least one other witness after Magyar. Therefore, in striking Magyar's testimony, the district court had a reasonable expectation that there would be more evidence forthcoming.

COUNSEL

Jay Lichtman, Los Angeles, California, for the plaintiffs-appellants.

Joseph Rimac, Los Angeles, California, for the defendant-appellee.

ORDER

The opinion in this case, filed on March 4, 1987, is amended as follows:

On page 7 of the slip opinion, replace the first complete sentence with: "However, the record shows that plaintiffs were scheduled to present at least one other witness after Mr. Magyar."

The petition for rehearing is denied in all other respects.

OPINION

KOZINSKI, Circuit Judge:

We consider whether the district court erred in striking plaintiff's testimony as a sanction for giving nonresponsive and evasive answers.

Facts

Leo Magyar, a septuagenarian immigrant from Eastern Europe, has lived in the United States for some 20 years. In April 1983 he brought suit in state court against United Fire Insurance Co. (United), which had issued him five health insurance policies. He alleged that United had wrongfully denied him benefits for stays in medical facilities in Hungary and Czechoslovakia. United, a New York corporation with its principal place of business in Illinois, removed the case to federal court. United filed its answer to the complaint in June 1983. Neither side demanded a jury trial.

The first district judge to whom the case was assigned issued a pretrial order in November 1983 in which he set a preliminary date for a jury trial. By October 1984, however, the case was transferred to another judge who set the case for a bench trial in her final pretrial order. Trial began in June 1985 and the first witness was Mr. Magyar. His testimony was marred from the start by nonresponsive and argumentative answers. On the second day of testimony, United began its

cross-examination and Mr. Magyar's testimony became even more nonresponsive. The district court finally warned Mr. Magyar that, if his answers continued to be nonresponsive, she would strike his testimony altogether. Mr. Magyar said he understood, but his very next answer was nonresponsive. *See* p. 4 n.2 *infra*. True to her word, the district judge struck Mr. Magyar's testimony in its entirety. She then invited the Magyars' lawyer to proceed with the balance of plaintiffs' case. The lawyer stated she had no more witnesses to call. The court thereupon dismissed the action under Federal Rule of Civil Procedure 41(b).

Discussion

[1] The Magyars focus their attack on the court's decisions to strike Mr. Magyar's testimony and to dismiss the case.[1] Examining first the district court's decision to strike testimony, we note that accommodating conflicts between a party's desire to testify and "the need to insure truth through cross-examination is one of the trial judge's most important functions." *United States* v. *Panza*, 612 F.2d 432, 438 (9th Cir. 1979), *cert. denied*, 447 U.S. 925 (1980). In performing

[1]They also raise two other issues. The first is a supposed lack of complete diversity, based on United's removal petition which stated that "plaintiff is" a California resident instead of "plaintiffs are" California residents. The Magyars later stipulated that there was diversity. They are unable to show anywhere in the record (or outside it) that either Mr. or Mrs. Magyar is a resident of any state other than California, much less that one of them is a resident of Illinois or New York. The district court's finding that diversity of citizenship existed is not clearly erroneous.

The Magyars also complain that they were unfairly denied a jury trial. But, by waiting until 18 months after United served its answer to raise the issue, the Magyars failed to comply with Rule 38(b)'s requirement that a jury demand be made in writing within ten days of the final pleading served. By the terms of that rule this was a waiver. We see no merit in appellants' claim that the first pretrial order, in predicting a jury trial of seven to ten days, relieved them of their default. The fact remains that they did not comply with Rule 38(b) and the district judge was well within her discretion in conducting a bench trial.

that function, a trial judge must necessarily have the discretion to order a witness to answer a question; and, if the order is disobeyed, to invoke appropriate sanctions. As we held in *Panza*, our review of a district judge's exercise of this discretion is narrow; it reflects our realization that trial judges must give instantaneous rulings on close questions. *Id.* at 439; *see also United States* v. *Cardillo*, 316 F.2d 606, 613 (2d Cir.), *cert. denied*, 375 U.S. 822 (1963).

[2] There are two limitations on the trial judge's authority to strike a witness' testimony. The first applies when the nonresponsive testimony is collateral to the key issues in the case. Under these circumstances, the right of cross-examination might be left sufficiently unimpeded that striking all of the witness' testimony could be an abuse of discretion. *See Panza*, 612 F.2d at 439; *see also Cardillo*, 316 F.2d at 613; 5 *Wigmore on Evidence* § 1391 n.2 (Chadbourn ed. 1974). The second is that the judge must give fair warning to the witness before striking his testimony. *Panza*, 612 F.2d at 439.

[3] The district court stayed well within these limitations and did not otherwise abuse her discretion. Although some of Mr. Magyar's nonresponsive answers did not concern issues central to his case, the incidents of nonresponsiveness and evasion were so frequent that they came to infect his entire testimony. Moreover, the transcript shows that the number of nonresponsive answers increased significantly as cross-examination wore on. The court first tried to deal with the problem by directing Mr. Magyar to answer responsively and by striking individual nonresponsive answers. When this did not work, she gave him clear warning that she would strike his entire testimony if he did not reform.[2]

(*Text continued on page 7*)

[2] THE COURT: Do you decline to answer the attorney's question, Mr. Magyar?

THE WITNESS: I am—I not denying anything. I just asking to explain the merit of this question. I don't understand the merit of the question so I don't want to mislead the court.

THE COURT: I think this plaintiff is not responding to counsel's questions and I am about to bar further testimony by him and strike his direct altogether unless he answers counsel's question.

You put this question to the witness one more time and if he declines to reply, I am going to strike all of his testimony.

Listen very carefully, Mr. Magyar.

THE WITNESS: Yes.

BY MISS REILLEY:

Q Mr. Magyar, I have asked you to refer to exhibit 107 which is an application dated by you on May 27, 1978. And it is an application for insurance with Occidental Life Insurance Company of California.

In response to question no. 3 which asks: "Please answer each question and explain all yes answers below: Have you or any family member to be insured had medical attention in the past five years?"

And you responded no, correct?

A I see this—they are here some impairments listed and the name of the physicians was indicated too.

Q Mr. Magyar —

A I can answer the question. I signed this application. I signed this application.

Q And did you in response to the question have medical attention in the past five years, did you check the no box?

A The check mark is on no, but the answer—please print the address indication is given about the medicare history and about the —

THE COURT: I've had it. Mr. Magyar, you may step down, sir.

I am not going to sit through a trial where you refuse to follow the court's orders to answer the questions.

THE WITNESS: I answered yes.

THE COURT: No, you did not, sir. You may step down. You have given nothing but nonresponsive answers here as suits your purpose and the court is not required to waste its time to listen to your nonresponsive answers.

[4] We are satisfied, on reviewing the record, that the district judge took into account that Mr. Magyar's ability to testify was affected by his age, and by the fact that English was not his native tongue. The record shows that she exercised considerable patience before even warning him. After two days of direct observation, however, she certainly had seen and heard enough to decide whether Mr. Magyar's answers were unresponsive because of inability or unwillingness. Her conclusion that he was simply being stubborn or evasive is supported by the record. We find no abuse of discretion.

[5] The district court's decision to dismiss the case followed quickly. It came without warning and, if the dismissal had been a sanction for failure to comply with a court order, might have amounted to an abuse of discretion. *See Industrial Bldg. Materials, Inc.* v. *Interchemical Corp.*, 437 F.2d 1336, 1338-39 (9th Cir. 1970)(rule 41(b) dismissal for failure to comply with court order should be accompanied by consideration of less drastic alternatives). However, the record shows that plaintiffs were scheduled to present at least one other witness after Mr. Magyar. In striking Mr. Magyar's testimony, the district court therefore had a reasonable expectation that there would be more evidence forthcoming. When plaintiffs' counsel declined to produce it, the record was left devoid of evidence supporting the Magyars' case. Cases like *Industrial Building*, which involve rule 41(b) dismissals as direct sanctions for failure to obey court orders, are therefore off point. Here, the district court's dismissal was premised on the second sentence in 41(b), which allows dismissal "on the ground that upon the facts and the law the plaintiff has shown no right to relief." With nothing in the record to support plaintiffs' case, United was clearly entitled to a dismissal. As required by rule 41(b), the district court's dismissal order was supported by findings of fact and conclusions of law. *See Industrial Bldg.*, 437 F.2d at 1339.

You may step down, sir.

Conclusion

The judgment of the district court dismissing plaintiffs' case is affirmed.

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Exhibit "B"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEO MAGYAR, et al.,	) Case
	) No. CV 83-3552
Plaintiffs	) AHS
	)
vs.	) JUDGMENT ON
	) DECISION BY
UNITED FIRE INSURANCE COMPANY, et al.,	) THE COURT
	)
Defendants	)

This action came on for trial before the Court, The Honorable Alicemarie Stotler, District Judge presiding, on June 25, 1985. The issues having been duly heard, defendant's motion for a dismissal has been granted on the grounds that plaintiffs are not entitled to relief because they failed to present any evidence upon which relief may be granted.

IT IS THEREFORE ORDERED AND ADJUDGED that plaintiffs take nothing, that the action be dismissed on the merits, and that

defendant United Fire Insurance Company recover of plaintiffs, Mr. and Mrs. Leo D. Magyar and/or plaintiffs' counsel and its costs of action

Alicemarie H. Stotler
Clerk, United States
District Court

DATED: August 16, 1985

Prepared and submitted by MARY EILEEN REILLEY OF BRONSON, BRONSON & McKINNON

Exhibit "C"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEO MAGYAR, et al.,	) Case
	) No. CV 83-3552
Plaintiffs	) AHS
	)
vs.	)
	) AMENDED JUDGMENT
UNITED FIRE INSURANCE COMPANY, et al.,	)
	)
Defendants	)
	)

This action came on for trial before the Court, The Honorable Alicemarie Stotler, District Judge presiding, on June 25, 1985. The issues having been duly heard, defendant's motion for a dismissal has been granted on the grounds that plaintiffs are not entitled to relief because they failed to present any evidence upon which relief may be granted,

IT IS THEREFORE ORDERED AND ADJUDGED that plaintiffs take nothing, that the action be dismissed on the merits, and that

defendant United Fire Insurance Company recover of plaintiffs its costs of action.

Alicemarie H. Stotler
United States District
Judge

DATED: January 6, 1986

App. 13 Exhibit "D"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEO MAGYAR, et al.,	Case No. CV 83 3552 AHS
Plaintiffs	
vs.	PRE-TRIAL CONFERENCE ORDER
UNITED FIRE INSURANCE COMPANY, et al.,	DATE: OCTOBER 29, 1984
	TIME: 1:30 P.M.
Defendants	PLACE: COURTROOM 231

Following Pre-Trial proceedings, pursuant to Rule 16, F. R. Civ. P. and Local Rule 9, IT IS ORDERED:

1. The parties are:

Leo Magyar - Plaintiff

Magdalena Magyar - Plaintiff

United Fire Insurance Company - Defendants.

The pleadings which raise issues are plaintiff's complaint; filed in Superior

Court of California, County of Los Angeles, Central District; removed to U.S. District Court on May 25, 1983 on Petition of the defendant.

Defendant's Answer to said Complaint, filed in U.S. District Court, Central District, and served on plaintiffs June 3, 1983.

2. Federal jurisdiction and venue are involved upon diversity of citizenship; granted by Court Order on May 25, 1983.

3. Trial is estimated to take five (5) days.

4. Court trial: Ct's Order re Court Trial Preparation served.

5. The following facts are admitted:

Defendants issued to plaintiffs five (5) health insurance policies; bearing numbers: 72476; BY0075538; SA100060; SA100061; and BY0070722. Said policies provided payment of hospital and medical benefits upon hospitalization of plaintiffs, as recommended by a licensed physician, provided that the "hospitalization" falls within the terms of the policies issued to plaintiffs.

6. The following facts, though stipulated, shall be without prejudice to any evidentiary objection:

That over ten (10) year period, plaintiffs at stayed at several "medical institutions" in Hungary and Czechoslovakia, although the precise nature of the institutions and stays is in dispute.

7. The following facts remain to be litigated at trial:

The nature and cause of plaintiffs' stays at said foreign medical institutions.

Whether said stays come within the terms of the aforementioned insurance policies.

Whether defendant entered into health insurance contracts with the plaintiffs with the intent of not performing.

Whether defendant breached its duty of good faith and fair dealing, in processing plaintiffs' claims.

Whether defendants' conduct was an unreasonable denial of benefits to the plaintiffs.

8. The following issues of law remain to be litigated at trial:

Whether defendant was obliged to make payments to plaintiffs under the aforementioned policies.

9. All discovery is complete.

10. The Joint Exhibit List of the parties has been filed herewith under separate cover.

11. Witness list of the parties has heretofore been filed with the Court.

12. Each party intending to present evidence by way of deposition testimony has marked such deposition in accordance with Local Rule 9.4.9.

13. The following law and motion matters are pending: None.

14. Bifurcation of the following issues for trial is ordered: None.

15. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remi~~aning~~ to be litigated, this Pre-Trial Conference Order shall govern the course of the Trial, unless modified.

DATED: 10/29/84

Alicemarie H. Stotler
UNITED STATES
DISTRICT COURT
JUDGE

OLAN AND FRIEDMAN

By: _____
Attorneys for Plaintiffs

BOOTH, MITCHEL, STRANGE & SMITH

By: _____
Attorneys for Defendants

App. 19 Exhibit "E"

Name	
Leo Magyar and Magdalena Magyar Plaintiffs Pro Se	
Address	
400 N. Martel Ave. Los Angeles, CA 90036 (213) 653-3069	

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LeoMagyar and Magdalena Magyar Plaintiff(s) vs.	CASE NUMBER CV83 3552-AHS
United Fire Insurance Company, Etc, Et Al., Defendant(s)	NOTICE OF APPEAL

Notice is hereby given that

Leo Magyar and Magdalena Magyar
(Name of Appellant)

hereby appeals to the United States Court of Appeals for the Ninth Circuit from

dismissal of action
(judgement or order)

entered in this action on 8-16-85,

entered on the docket sheet on 8-22-85
(date judgment or order entered on the docket sheet)

Dated: September 12, 1985

Signature of appellant or appellant's attorney

Note: Pursuant to Local Rule 17, service of the notice of appeal may be made by the appellant or appellant's attorney or the clerk of the district court. If the clerk is to make service, the notice shall contain the names and addresses of the attorneys' for all the parties to the the action or, if not represented by an attorney, the names and addresses of the parties. Each party filing a notice of appeal with this court shall furnish a sufficient number of copies of such notice to enable the clerk to comply with the mailing required by Rule 75 of the Federal Rules of Civil Procedure.